

THE HONORABLE ROBERT J. BRYAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TIMOTHY DIETZ,

Plaintiff,

v.

QUALITY LOAN SERVICE CORP. OF
WASHINGTON; WELLS FARGO HOME
MORTGAGE; WELLS FARGO BANK,
N.A.; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.; DOE
DEFENDANTS 1-20,

Defendants.

No. 3:13-cv-05948-RJB

**WELLS FARGO'S MOTION TO
CANCEL LIS PENDENS**

NOTE ON MOTION CALENDAR:
JANUARY 6, 2017

WITHOUT ORAL ARGUMENT

I. INTRODUCTION AND RELIEF REQUESTED

Defendant Wells Fargo Bank, N.A. ("Wells Fargo") respectfully requests that the Court enter an order cancelling the lis pendens recorded by Plaintiff Timothy Dietz ("Dietz") pursuant to RCW 4.28.325. The lis pendens should be cancelled because it was recorded in contravention of RCW 61.24.127(2)(d) and was recorded after Dietz's claims in this lawsuit were dismissed with prejudice.

II. FACTS

This was a post-sale "wrongful foreclosure" case related to real property in Longview, Washington ("Property").¹

¹ Jan. 3, 2014 Or. p. 1, Dkt. 15.

1 Wells Fargo acquired the Property at a foreclosure sale on September 20, 2013.²

2 Dietz filed this lawsuit on October 30, 2013.³

3 On January 3, 2014, the Court dismissed Dietz's first complaint with leave to amend.⁴

4 On March 25, 2014, following amendment, the Court dismissed Wells Fargo from the
5 lawsuit with prejudice.⁵

6 On July 18, 2014, Dietz recorded a lis pendens ("Lis Pendens") against the Property in
7 the Cowlitz County property records.⁶ The Lis Pendens is captioned under this Court and this
8 case but was not filed in the Court record.⁷

9 Dietz appealed this Courts' final judgment on November 19, 2014.⁸ The appeal is still
10 pending before the Ninth Circuit.

11 **III. EVIDENCE RELIED UPON**

12 This motion relies upon the prior orders of the Court, the Lis Pendens attached hereto as
13 Exhibit A, and the other pleadings and papers on file with the Court in this manner.

14 **IV. ISSUE**

15 Should the Court cancel the Lis Pendens?

16 **V. ARGUMENT**

17 **A. Motion to Dismiss Standard**

18 RCW 4.28.320 authorizes the filing of a lis pendens "after an action affecting title to real
19 property has been commenced[.]" The statute also provides a procedure for cancelling the lis
20 pendens:

21 And the court in which the said action was commenced may, at its discretion, at any time
22 after the action shall be settled, discontinued or abated, on application of any person
23 aggrieved and on good cause shown and on such notice as shall be directed or approved
by the court, order the notice authorized in this section to be canceled of record, in whole
or in part, by the county auditor of any county in whose office the same may have been

24 ² *Id.* at p. 4.

25 ³ *Id.*

26 ⁴ Dkt. 15.

27 ⁵ Dkt. 30.

⁶ Lis Pendens, Ex. A hereto.

⁷ *Id.*

⁸ Dkt. 55.

1 filed or recorded, and such cancellation shall be evidenced by the recording of the court
2 order.

3 RCW 4.28.320. RCW 4.28.325 authorizes an identical procedure for federal court.

4 As an initial matter, the Lis Pendens should be cancelled because the Washington Deed
5 of Trust Act specifically prohibits a foreclosed borrower such as Dietz from filing such an
6 encumbrance. RCW 61.24.127(2)(d) (“A borrower or grantor who files such a [post-sale] claim
7 is prohibited from recording a lis pendens... related to the real property foreclosed upon[.]”).

8 Additionally, cancellation of the Lis Pendens is appropriate where Dietz has no active
9 claims challenging title to the Property and has not sought a stay of enforcement pending his
10 appeal. Indeed, Dietz filed this suit after foreclosure of his Property, raised claims related to the
11 loan and foreclosure, and those claims were dismissed with prejudice after an opportunity to
12 amend. The cancellation of the Lis Pendens is appropriate under this procedural posture. *See*
13 *Cashmere State Bank v. Richardson*, 105 Wn. 105, 109, 177 P. 727 (1919) (appropriate to cancel
14 lis pendens after claims affecting property were dismissed on the merits); *Guest v. Lange*, 195
15 Wn. App. 330, 341–42, 381 P.3d 130, (2016) (cancellation of lis pendens during pending appeal
16 was not appropriate where filing party obtained stay); *Beers v. Ross*, 137 Wn. App. 566, 575, 154
17 P.3d 277, 282 (2007) (cancellation of lis pendens during pending appeal was appropriate where
18 filing party did not request stay pending appeal).

19 Dietz has not obtained a stay in this case and all of his claims have been dismissed. Along
20 with the timing of the Lis Pendens (after Wells Fargo’s motion to dismiss was granted), the facts
21 here merit cancellation.

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1 **VI. CONCLUSION**

2 For the reasons stated above, the Court should enter the accompanying proposed order
3 cancelling the Lis Pendens pursuant to RCW 4.28.320.

4 DATED: December 22, 2016.

5 LANE POWELL PC

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18 Mortgage, Inc., Wells Fargo Bank, N.A., and
19 Mortgage Electronic Registration Systems, Inc.
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CERTIFICATE OF SERVICE

I certify that on the date indicated below, I caused the foregoing document to be filed with the Clerk of the Court via the CM/ECF system. In accordance with their ECF registration agreement and the Court's rules, the Clerk of the Court will send e-mail notification of such filing to the following persons:

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I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

SIGNED December 22, 2016, at Seattle, Washington

s/ Peter Elton

Peter Elton